

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 2630

INTRODUCER: Regulated Industries Committee and Senator Webster

SUBJECT: Vacation & Timeshare Plans

DATE: April 18, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.			BI	
3.			JU	
4.			RC	
5.				
6.				

I. Summary:

The bill revises the formula for funding reserve accounts. It authorizes a seller to offer timeshare interests in timeshare plans located outside the state without filing a public offering statement as long as certain criteria have been satisfied. It amends the definition of “one-to-one purchaser accommodation ratio” by replacing references to “calendar year” or “year” with “12-month period.”

It provides for timeshare condominium and cooperative associations to be exempted from the board turnover provisions of ch. 718 and 719, F.S., unless a majority of those present at a duly called meeting, other than the developer, vote to hold a transfer of control election. It provides that a developer may deliver documents required under ch. 721, F.S., by alternative media if agreed to and specified by the purchaser. It provides for procedures for the election. The bill provides for waiver of reduction of reserves by a managing entity that is an owners’ association.

It provides that any insurance, regardless of any requirement in the timeshare instrument of coverage for “full insurable value,” “replacement cost,” or the like, may include reasonable deductibles as determined initially by the seller and thereafter by the managing entity.

This bill substantially amends the following sections of the Florida Statutes: 721.03, 721.05, 721.13 and 721.165.

II. Present Situation:

Chapter 721, F.S., provides for regulation of the offering, sale, management, and operation of real and personal property timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this

state or offered within this state. A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Land Sales, Condominiums, and Mobile Homes (division), prior to offering the timeshare plan to the public.¹ The division is authorized to cite deficiencies in the filing, if any, and approves the filing after the developer has corrected all deficiencies.

Reserve Accounts

Section 721.03(3)(e), F.S., provides that the developer of a timeshare that is subject to chs. 718 and 719, F.S., must fund reserve accounts for capital expenditures and deferred maintenance for the roof, plumbing, air-conditioning, and any component of the structure that has a useful life that is less than the useful life of the overall structure when the timeshare is converted to a condominium or cooperative. These reserve accounts are funded using a formula, which is the product of the estimated current replacement cost of the component as of the date of conversion multiplied by a fraction with the numerator being the remaining life of the component in years and the denominator being the total useful life of the component in years.

Public Offering

Sellers of out-of-state timeshare plans offering to in-state residents must file a public offering statement with the division for examination and approval under s. 721.07, F.S., or s. 721.55, F.S. whichever is applicable.² The public offering statement includes important disclosures for the timeshare purchaser including the background and experience of the developer, any pending lawsuits, and many details about the operation of the timeshare plan. The purchaser has a 10-day cancellation period after all required documents have been provided,³ including amendments that the developer deems to be material.⁴ The purchaser's purchase deposit is held in escrow by an escrow agent who must be independent from the developer.⁵ The purchase deposit cannot be released from escrow until several conditions have been satisfied including expiration of the purchaser's 10-day cancellation period and proof that the developer can convey the timeshare period unencumbered or with a recorded non-disturbance and notice to creditor's instrument or similar protection.⁶

Purchasers must receive a fully executed paper copy of the purchase contract.⁷ The public offering statement may be provided through alternative media in lieu of receiving the written, paper material.⁸

According to industry representatives, the public offering requirements prevent timeshare companies from being able to talk to their owners about projects that are part of their timeshare portfolios but not registered in Florida.

¹ Section 721.07, F.S.

² Section 721.03(1), and s. 721.07, F.S.

³ Section 721.10, F.S.

⁴ Section 721.07(3), F.S.

⁵ Section 721.05(18), F.S. and s. 721.08, F.S.

⁶ Section 721.08, F.S.

⁷ Section 721.07(6), F.S.

⁸ Rule 61B-39.008 F.A.C.

Definitions

Section 721.05, F.S., defines “one-to-one purchaser to accommodation ration” to mean the ratio of the number of purchasers eligible to use the accommodations of a timeshare plan on a given day to the number of accommodations available for use within the plan on that day, such that the total number of purchasers eligible to use the accommodations of the timeshare plan during a given year never exceeds the total number of accommodations available for use in the timeshare plan during that year. For purposes of calculation, each purchaser must be counted at least once, and no individual timeshare unit may be counted more than 365 times per calendar year (or more than 366 times per leap year).

Management

The board of administration of a timeshare owner’s association is the managing entity of the timeshare plan.⁹ When an owner’s association has entered into a contract with a manager to provide some or all of the management services to the timeshare plan, both shall be considered the managing entity of the plan and shall be jointly and severally responsible for the faithful discharge of the duties of the managing entity.¹⁰ If condominium or cooperative units are included in the timeshare owner’s association, those units shall not be considered a condominium or cooperative association under chs. 718 and 719, F.S. unless the owners’ association also operates the entire condominium or cooperative under ss. 718.111 and 719.104, F.S.¹¹

Insurance

The seller and thereafter the managing entity is responsible for obtaining insurance to protect the accommodations and facilities of the timeshare plan in an amount equal to the replacement cost of the accommodations and facilities. If a developer fails to obtain the insurance while in control of the managing entity it constitutes a breach of a fiduciary duty under s. 721.13(2)(a), F.S., unless due diligence to obtain and maintain the required insurance can be shown.¹²

III. Effect of Proposed Changes:

The bill amends s. 721.03(3)(e)2., F.S., by replacing the numerator of the fraction used in the funding formula for reserve accounts for timeshare conversions to condominiums or cooperatives from the remaining life of the component in years to the age of the component in years. This change in the formula will require more money be put in the reserve accounts if the component is older at the time of conversion. However, if the component is new, then the amount put in the reserve account will be less. Under the current formula the older the component is at conversion the less that the developer is required to put in the reserve fund and the newer the component is at conversion the greater the amount that the developer has to be put in the reserve account.

⁹ Section 721.13(1)(b)1., F.S.

¹⁰ Section 721.13(1)(b)2., F.S.

¹¹ Section 721.13(1)(b)3., F.S.

¹² Section 721.165, F.S.

The bill creates s. 721.03(11), F.S., to provide that a seller can offer timeshare interests in a real property timeshare plan located outside the state of Florida without filing a public offering statement pursuant to s. 721.07, F.S., or s. 721.55, F.S., provided all of the following criteria have been satisfied:

- The seller provides a disclosure statement to each prospective purchaser that contains information that is substantively equivalent to the disclosures required in timeshare and multi-state timeshare public offering statements. The disclosure statement must also include exhibits of the following documents:
 - Declaration of condominium;
 - Cooperative documents;
 - Declaration of covenants and restrictions;
 - Articles of incorporation creating the owners' association;
 - Bylaws of the owners' association;
 - Management agreement and all maintenance and other contracts regarding the management and operation of the timeshare property which have terms in excess of one year;
 - Estimated operating budget for the timeshare plan and the required schedule of purchasers' expenses; and
 - Any other documents or instruments creating the timeshare plan.
- If the seller delivers the disclosure statement in a way that satisfies the above requirements, the delivery shall be deemed to satisfy the requirements of ch. 721, F.S., regarding a public offering statement.
- The seller utilizes and furnishes to each purchaser of an out-of state timeshare plan offered, a fully completed and executed copy of a purchase contract that contains the statement in s. 721.065(2)(c), F.S., in conspicuous type located immediately prior to the space in the contract reserved for the purchaser's signature. The contract must also contain the initial purchase price and any additional charges to which the purchaser may be subject to in connection with the purchase of the timeshare plan, such as financing, or that will be collected from the purchaser on or before closing, such as the current year's annual assessment for common expenses.
- All purchase contracts offered must also contain the following statements in conspicuous type:¹³
 - This timeshare plan has not been reviewed or approved by the State of Florida.

¹³ Section 721.05(8), F.S., defines conspicuous type to mean: "(a) Type in upper and lower case letters two point sizes larger than the largest nonconspicuous type, exclusive of headings, on the page on which it appears but in at least 10-point type; or (b) Where the use of 10-point type would be impractical or impossible with respect to a particular piece of written advertising material, a different style of type or print may be used, so long as the print remains conspicuous under the circumstances." The type must be separated on all sides from other type and print. "Conspicuous type may be utilized in contracts for purchase or public offering statements only where required by law or as authorized by the division."

- The timeshare interest you are purchasing requires certain procedures to be followed in order for you to use your interest. These procedures may be different from those followed in other timeshare plans. You should read and understand these procedures prior to purchasing.
- The out-of-state timeshare plan may only be offered by the seller on behalf of:
 - The developer of a timeshare plan that has been approved by the division within the preceding seven years pursuant to ss. 721.07 or 721.55, F.S. or which has been amended by the developer and approved by the division within the preceding seven years, which timeshare plan has neither been terminated nor withdrawn; or
 - A developer is under common ownership or control with a developer described above, provided that any common ownership shall constitute at least a 50-percent ownership interest.
- An out-of-state timeshare plan may only be offered under this provision to a person who already owns a timeshare interest in a timeshare plan filed by a developer noted above.
- Except for ss. 721.06, 721.065, 721.07, 721.27, 721.55, and 721.58,¹⁴ any out-of-state timeshare plan must meet all the requirements of ch. 721, F.S. The plan is also eligible for any exemptions provided under ch. 721, F.S.
- Any escrow account required to be established by s.721.08, F.S. for any out-of-state timeshare plan offered under this subsection may be maintained in the situs jurisdiction.
- Notice of the plan must be provided to the division on a form prescribed by the division, along with payment of a one-time fee not to exceed \$1,000 per filing.

Definitions

The bill amends the definition of “one-to-one purchaser to accommodation ratio” in s. 721.05(25), F.S., by providing that the use of the timeshare accommodations can be calculated during any 12-month period rather than a given calendar year.

A representative from the timeshare industry states that this change recognizes the different use plans and different types of timeshare plans in the marketplace today.

¹⁴ Section 721.06, F.S., provides for contracts for purchase of timeshare interests, s. 721.065, F.S., provides for resale purchase agreements, s. 721.07, F.S., provides for the public offering statement, s. 721.27, F.S., provides for the annual fee for each timeshare unit in the plan, s. 721.55, F.S., provides for multi-site timeshare plan public offering statements, and s. 721.58, F.S., provides for the filing and annual fees.

Management

The bill creates s. 721.13(1)(b)4.a., F.S., to provide that notwithstanding anything to the contrary contained in ch. 718 or ch. 719, F.S., timeshare condominium associations and timeshare cooperative associations are not subject to the provisions of ss. 718.301(1) and (2) or 719.301(1) and (2), F.S. unless a majority of those present at a duly called meeting of the association other than any developer, which majority shall constitute at least 15 percent of the total voting interests other than those owned by any developer, vote to hold a transfer-of-control election.¹⁵

A meeting to decide whether to have a transfer-of-control election shall be conducted upon the written request of 15 percent of the total voting interests other than those owned by any developer. If a transfer-of-control election is approved, that election, when held, shall entitle purchasers other than a developer to elect a majority of the members of the board of administration of the association.

The bill creates s. 721.13(1)(b)4.b., F.S. to provide that no transfer-of-control election shall be held prior to the time that transfer of majority control of the members of the board of administration of the association would otherwise be required by the provisions of s. 718.301(1) or s. 719.301(1), F.S.

After such time, the transfer of control election shall be held within 75 days after the vote authorizing the election. After purchasers other than a developer vote to elect a majority of the members of the board of administration of the association, a developer may exercise the right to vote any developer-owned timeshare interests in the same manner as any purchaser, except for the purposes of reacquiring control of the association or electing a majority of the members of the board of administration.

The bill creates s. 721.13(3)(c)3., F.S., to provide that for timeshare plans whose managing entity is an owners' association, reserves may be waived or reduced by a majority vote of those voting interests that are present, in person or by proxy, at a duly called meeting of the owners' association. If a purchasers' meeting has been called to determine whether to waive or reduce the funding of reserves without a result or a quorum being attained, the reserves as included in the budget shall go into effect.

According to industry representatives, this change would allow timeshare associations that are part of an undivided interest timeshare project to waive reserves as is currently permitted for timeshare condominium associations and timeshare cooperative associations.

Insurance

The bill amends s. 721.165(1), F.S., by providing that any insurance, regardless of any requirement in the timeshare instrument of coverage for "full insurable value," "replacement cost," or the like, may include reasonable deductibles as determined initially by the seller and

¹⁵ These provisions govern and provide for the turnover of control from the developer to the non-developer unit owners at some point in time, but in no event later than seven years after creation of the condominium or cooperative.

thereafter by the managing entity. This language tracks the insurance language in the Condominium Act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the department, each seller who is entitled to the exemption and elects not to file a public offering statement with the department would pay a \$1,000 exemption fee while being able to forego paying the \$2 timeshare per week fee.

C. Government Sector Impact:

According to the department, there are currently 78 out-of-state timeshare projects (comprising 161,888 timeshare weeks) filed with the division. During FY 2004/05, 11 projects (comprising of 51,056 timeshare weeks) were filed. The department was unable to determine the number of projects that would be entitled to this exemption; however, based upon FY 2004/05 filings and if all 11 projects were to have been entitled to this exemption, the department would receive \$11,000 in exemption fees instead of \$102,112 in filing fees and \$102,112 in annual fees, for a total reduction of \$91,112.

The department estimates that this bill may somewhat lessen the workload of division examiners who would otherwise be required to examine the out-of-state timeshare plans that will be exempt. The decrease in workload will not be significant.

According to industry representatives, the \$1000 exemption fee for out-of-state filings may increase revenues to the department by allowing timeshare companies the ability to market the out-of-state timeshares portfolios that were not registered in Florida.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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